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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,775	09/21/2007	Patrick Blin	D-17057	4357
25572 7590 01/13/2009 MEADWESTVACO CORPORATION ATTN: IP LEGAL DEPARTMENT 1021 Main Campus Drive Raleigh, NC 27606				
EXAMINER PERREAULT, ANDREW D				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
01/13/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

### Office Action Summary

**Application No.**

10/599,775

**Applicant(s)**

BLIN, PATRICK

**Examiner**

ANDREW PERREAULT

**Art Unit**

3728

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 4/27/07

**DETAILED ACTION**

***Specification***

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 20, lines 3-4, "said container" lacks antecedent basis, as no container per se has been defined, only inferred. In line 4, "said each aperture" lacks antecedent basis for "each aperture" being identified, and should be --each said aperture--. In lines 5 and 6, "said articles" lack antecedent basis, as the invention is a top closure alone with respect to imaginary articles as a possible adjunct, accordingly no "said articles" have been positively defined. The phrasing should be --the articles--, as only positively defined elements of the invention are "said \_\_\_\_"

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Galbrierz et al. (5,845,776).

Re claim 20, Galbrierz discloses a top closure (1) for closing an open top of a container to form a carton, said top closure being formed of foldable sheet material (col. 6, line 25-54) and comprising an article-retaining arrangement including a plurality of apertures (15) each for receiving a portion of an article (such as B in fig 5, 7) held within said container, said each aperture having a frangible connection (73, 75, 81, 83, 85) extending to another one of said apertures (fig 6) to facilitate removal of said articles from the carton such that in use removal of said articles breaks said frangible connection, said frangible connection being arranged such that structural integrity of the carton is substantially maintained upon breaking of said frangible connection (col. 7, line 36, line 20-41).

Re claim 21, Galbrierz discloses wherein said plurality of apertures are arranged in rows, each aperture of a row having a frangible connection extending to one of said apertures of the same row (fig 1, 6).

Re claim 22, Galbrierz discloses wherein said plurality of apertures are arranged

in rows, each aperture of a row having a frangible connection extending to one of said apertures of a different row (fig 1, 6).

Re claim 23, Galbrierz discloses wherein each aperture at and end of a row is connected to an edge of said top closure by a further frangible connection (fig 1, 6).

Re claim 24, Galbrierz discloses wherein each aperture at an end of a row is connected to an edge of said top closure by a further frangible connection (fig 1, 6).

Re claim 25, Galbrierz discloses wherein a frangible connection between two of said apertures intersects a frangible connection between two other ones of said apertures (fig 1, 6).

Re claim 26, Galbrierz discloses wherein said frangible connection is an arrangement such that upon breaking of said frangible connection, no material is removed from said top closure (fig 6).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17-19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mardon (GB406511) in view of Taub (4,717,070).

Re claim 17, Mardon discloses a two part carton (fig 1-5) comprising an open top container (1) and a separate top closure (4), wherein said open top container comprises a pair of opposed side walls and a pair of opposed end walls (fig 1), one of said end

walls comprises a top flap (2') hingedly connected to an uppermost edge (2) of said one wall, said top flap is folded downwardly with respect to said uppermost edge to extend into said open top container (fig 2, 4), said top closure includes a top panel, said top closure engages with said top closure such that said top closure is locked in a recessed position below said uppermost edge of said open top container (page 2, left column, line 57-65); but does not disclose said top closure includes an engaging tab, said top closure engages with said engaging tab of said top closure. However, Taub discloses a similar device (fig 1-8) with an open top container (10) and a separate top closure (20); said top closure includes an engaging tab (46), said top closure engages with said engaging tab of said top closure (fig 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Mardon reference, such that said top closure includes an engaging tab, said top closure engages with said engaging tab of said top closure, as suggested and taught by Taub, for the purpose of further securing the closure in place, providing an enhanced grip surface, and improving the strength of the device and the ease of use (col. 1, line 28-46).

Re claim 18, the combined references disclose wherein said engaging tab extends upwardly from said top panel and engages between said top flap and said one wall (Mardon fig 1; Taub fig 4).

Re claim 19, the combined references disclose wherein said engaging tab extends upwardly from said top panel and engages an outside surface of said top flap (Mardon fig 1; Taub fig 4).

Re claim 28, Mardon discloses a two-part blank for forming a carton (fig 1-5), comprising a first part (1) for forming an open top container and a second part (4) for forming a top closure, said open top container comprises a pair of opposed side walls and a pair of opposed end walls (fig 1), one end wall comprising a top flap (2') hingedly connected an uppermost edge (2) of said one wall, said top flap is folded downwardly with respect to said uppermost edge to extend into said container when the carton is erected (fig 2, 4), said top closure including a top panel, and said top flap engages with said first part, when the carton is erected, such that said top closure is locked in recessed position below said uppermost edge of said at least one wall; but does not disclose said top closure including an engaging tab, and said top flap engages with said engaging tab. However, Taub discloses a similar device (fig 1-8) with an open top container (10) and a separate top closure (20); said top closure includes an engaging tab (46), said top closure engages with said engaging tab (fig 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Mardon reference, such that said top closure includes an engaging tab, said top closure engages with said engaging tab, as suggested and taught by Taub, for the purpose of further securing the closure in place, providing an enhanced grip surface, and improving the strength of the device and the ease of use (col. 1, line 28-46).

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mardon in view Galbrierz et al.

Re claim 27, Mardon discloses a two part blank (fig 1-5) for forming a carton, comprising a first part (1) for forming an open top container and a second part (4) for forming a top closure having a plurality of apertures (13) each for receiving a portion of an article (such as 12) held within the carton, but does not disclose each aperture having a frangible connection extending to another one of said apertures to facilitate removal of said articles from the carton such that removal of said articles breaks said frangible connection, said frangible connection being arranged such that structural integrity of the carton is substantially maintained upon breaking of said frangible connection. However, Galbrierz discloses a similar top closure (1) including a plurality of apertures (15) each for receiving a portion of an article (such as B in fig 5, 7) held within said container, said each aperture having a frangible connection (73, 75, 81, 83, 85) extending to another one of said apertures (fig 6) to facilitate removal of said articles from the carton such that removal of said articles breaks said frangible connection, said frangible connection being arranged such that structural integrity of the carton is substantially maintained upon breaking of said frangible connection (col. 7, line 36, line 20-41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Mardon reference, such that each aperture having a frangible connection extending to another one of said apertures to facilitate removal of said articles from the carton such that removal of said articles breaks said frangible connection, said frangible connection being arranged such that structural integrity of the carton is substantially maintained upon breaking of said



frangible connection, as suggested and taught by Galbrierz, for the purpose of allowing content to be easily removed (col. 3-5).

***Election/Restrictions***

9. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species A (figures 1A-1C)

Species B (figures 2A-2C)

Species C (figures 3A-3D)

Species D (figures 4A-4B)

Species E (figures 5A-5D)

Species F (figures 6A-6C)

Species G (figures 7A-7C)

Species H (figures 8A-8F)

Species I (figures 9A-9D)

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

10. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: each of the species are not obvious variants of the other species.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAULT whose telephone number is

(571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P./  
Examiner, Art Unit 3728

/Bryon P. Gehman/  
Primary Examiner, Art Unit 3728